

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

C.R.P.No.1705 of 2015

ORDER:

This revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 17.03.2015 passed in E.A.No.131 of 2014 in E.A.No.6 of 2012 in E.P.No.64 of 2010 in O.S.No.20 of 2008 by the Senior Civil Judge, Nandikotkur, whereby dismissing the application filed under Order VI Rule 17 C.P.C., r/w Section 151 C.P.C filed for amendment of main claim application E.A.No.6 of 2012.

The petitioners filed the main claim application in E.A.No.6 of 2012 against the Decree holder and Judgment debtor and auction purchaser in the above E.P. stating that the E.P. schedule property is their ancestral property and they are entitled to 1/5th share each in the said property; that after completion of trial only the petitioners came to know that the E.P. schedule property is assessed waste land belonging to the Government and hence they filed the present claim application for amendment of the main claim application. The Court below after hearing both sides and considering the facts and circumstances of the case, dismissed the E.A. Hence the present revision petition is filed.

Learned counsel for the petitioner submits that the Court below ought to have seen that the amendment application was filed as per the letter of the revenue officials, who informed that the subject land is Government land and there is prohibition for registration under Section 22-A of the Stamps and Registration Act and therefore, necessary amendment of the main claim petition ought to have been permitted for effective adjudication of the case.

On the other hand, learned counsel for the respondents submits that the main plea in the E.A., was that the subject land is private land and after completion of arguments at a belated stage, the petitioner filed the amendment petition without any reasonable cause. The Court

below after considering the same rightly dismissed the E.A., observing that the nature of the claim changes and the petitioner cannot take inconsistent pleas by way of amendment.

As can be seen from the impugned order the Court below rightly observed that in spite of due diligence, the party could not have sought such amendment before commencement of the trial. Further, after both the parties adduced oral and documentary evidence, when the matter was posted for arguments, at that stage the petitioners filed the present claim application to amend the main claim application stating that the petition schedule property is an assessed waste land and it is prohibited for registration. Whereas the petitioners pleaded in the main claim application that the schedule property is ancestral property and adduced evidence, and at a belated stage, they introduced a new version with regard to the nature of the property. The Court below observed that if amendment is allowed, the nature of the claim application will be changed and prejudice will be caused to the decree holder and auction purchaser and accordingly dismissed the application.

As per the 1976 amendment, the claim petitions filed under Order 21 Rule 58 C.P.C are to be tried like civil suits and as per Order 6 Rule 17, which was amended in the year 2002, the proviso thereto restricts and curtails the power of the Court to allow amendment of pleadings once the trial has commenced. In such a situation, the Court must come to the conclusion that in spite of due diligence, the party could not have sought such amendment before commencement of the trial. But, the trial Court found otherwise.

In the case on hand, the petitioner wants to introduce a new case by way of the present amendment after the entire evidence was completed, which is not permissible under law. In view of the above facts and circumstances, I do not see any error or infirmity in the order passed by the Court below warranting exercise of supervisory jurisdiction of this Court under Section 115 C.P.C.

Accordingly, the Civil Revision Petition is dismissed. No costs.
Pending miscellaneous petitions, if any, shall stand closed.

A. RAJASHEKER REDDY, J.

10th July, 2015
Js.